

ESTTA Tracking number: **ESTTA559286**

Filing date: **09/13/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Bayer Healthcare LLC		
Entity	Corporation	Citizenship	Delaware
Address	100 Bayer Road Pittsburgh, PA 15205 UNITED STATES		

Attorney information	Tara M. Vold Fulbright & Jaworski L.L.P. 801 Pennsylvania Avenue, NW Washington, DC 20004 UNITED STATES wotrademark@fulbright.com Phone:202-662-0200
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Applicant Information

Application No	85907678	Publication date	09/10/2013
Opposition Filing Date	09/13/2013	Opposition Period Ends	10/10/2013
Applicant	NARULA, ACHARAN S 107 Boulder Bluff Trail Chapel Hill, NC 27516 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 2004/12/08 First Use In Commerce: 2004/12/08
All goods and services in the class are opposed, namely: Dietary supplements for promoting bronchial tubes health

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1536042	Application Date	05/05/1988
Registration Date	04/25/1989	Foreign Priority Date	NONE
Word Mark	ALEVE		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 005. First use: First Use: 1988/04/25 First Use In Commerce: 1988/04/25 ANTI-INFLAMMATORY, ANALGESIC, AND ANTIPYRETIC PHARMACEUTICAL PREPARATIONS
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U.S. Registration No.	3287780	Application Date	02/13/2007
Registration Date	09/04/2007	Foreign Priority Date	NONE
Word Mark	ALEVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2000/07/31 First Use In Commerce: 2000/07/31 Pharmaceutical antitussive-cold preparations; Preparations for treating colds		

Attachments	BHCC.T0023US.OP - BRONCALEVE - Notice of Opposition.pdf(63810 bytes) BHCC.T0023US.OP - BRONCALEVE - Exhibit A - Notice of Opposition.pdf(71257 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/tmv/
Name	Tara M. Vold
Date	09/13/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 85/907,678
By Acharan S. Narula dba Narula Research for the Mark: BRONCALEVE
Filed on April 18, 2013, Published in the *Official Gazette* on September 10, 2013

BAYER HEALTHCARE LLC,
Opposer,

v.

NARULA, ACHARAN S. dba NARULA
RESEARCH,
Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

Bayer Healthcare LLC (“Opposer”), a Delaware limited liability company having a principal place of business at 100 Bayer Road, Pittsburgh, Pennsylvania 15205, believes that it will be damaged by registration of the mark “BRONCALEVE” as shown in Application Serial No. 85/907,678 for goods in International Class 5 (the “Application”) and hereby opposes the same.

As the grounds of Opposition, Opposer alleges that:

1. Acharan S. Narula dba Narula Research (“Applicant”) filed a use-based application to register the mark “BRONCALEVE” for “dietary supplements for promoting broncial [sic] tubes health” in International Class 5 as evidenced by the publication of such mark in the *Official Gazette* on September 10, 2013.

2. Through its predecessors-in-interest, Opposer has, since at least as early as April 25, 1988, used the mark ALEVE in connection with products related to the treatment of pain. Opposer is the owner of, among others, an incontestable registration for the trademark “ALEVE” (United States Registration No. 1,536,042, registered April 25, 1989) for “anti-inflammatory, analgesic and antipyretic pharmaceutical preparations” in Class 5 and a registration for the trademark “ALEVE” (United States Registration No. 3,287,780, registered September 4, 2007) for “pharmaceutical antitussive-cold preparations; preparations for treating colds” in Class 5. Printouts of the registration certificates and TSDR database information for these registrations are attached hereto as Opposer's Exhibit A.

3. By virtue of its efforts and the expenditure of considerable sums for promotional and advertising activities and by virtue of the excellence of its goods, Opposer has gained for its mark “ALEVE” a most valuable reputation and has created, in the minds of the buying public, an exclusive association between “ALEVE” and its goods.

4. Applicant's alleged mark is confusingly similar to Opposer's ALEVE mark in appearance, sound, connotation, and commercial impression. Upon information and belief, Applicant's alleged mark is alleged to be used for goods which are identical, similar and/or related to the goods in connection with which Opposer has used its “ALEVE” mark and are sold to substantially the same class of customers through the same channels of trade.

5. Priority is not an issue. Applicant filed its application for BRONCALEVE on April 18, 2013 alleging that the mark was first used in commerce on December 8, 2004. Opposer has used the “ALEVE” mark prior to the Applicant's application date of April 18, 2013 and prior to the claimed first use date of December 8, 2004 contained in the opposed application.

6. Opposer filed its applications for “ALEVE” prior to the filing date and claimed first use date of the opposed application.

7. Use by Applicant of the alleged trademark “BRONCALEVE” is without Opposer's consent or permission.

8. The mark that Applicant seeks to register so resembles Opposer’s “ALEVE” mark as to be likely, when used on or in connection with Applicant’s goods, to cause confusion, or to cause mistake, or to deceive. Purchasers and prospective purchasers are likely to falsely believe that Applicant’s goods offered under Applicant’s Mark are sponsored, endorsed, or approved by Opposer, or are in some way affiliated, connected or associated with Opposer. Furthermore, any defect, objection or fault found with Applicant’s goods offered and sold under its “BRONCALEVE” mark would be likely to reflect upon and seriously injure the reputation that Opposer has established for its goods offered under its “ALEVE” mark. Registration therefore should be refused under 15 U.S.C. § 1052(d).

9. The mark “ALEVE” is distinctive and famous throughout the United States, and has become closely associated with the goods of Opposer. The “ALEVE” mark became famous prior to the filing of Applicant’s application for “BRONCALEVE.”

10. The trademark proposed for registration by Applicant, namely, “BRONCALEVE,” is likely to cause dilution by blurring and dilution by tarnishment of Opposer’s “ALEVE” mark, and also reduces the capacity of the famous “ALEVE” mark to identify the goods of Opposer.

11. If Applicant is granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its alleged mark. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Bayer Healthcare LLC prays that Application Serial No. 85/907,678 be rejected, and that registration of the mark therein be refused and that the opposition be sustained.

Respectfully submitted,

Dated: September 13, 2013

By:



Richard J. Groos
Tara M. Vold
FULBRIGHT & JAWORSKI L.L.P.
600 Congress, Suite 2400
Austin, Texas 78701
Tel: 512.474.5201
Fax: 512.536.4598

ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the NOTICE OF OPPOSITION has been served via First Class Mail to Applicant/Correspondent at its address of record on this the 13th day of September 2013:

Acharan S Narula
107 Boulder Bluff Trl
Chapel Hill, North Carolina 27516-9656



Alexandra Thiery-Gore

Exhibit A

Side - 1



**NOTICE OF ACCEPTANCE OF §8
DECLARATION AND §9 RENEWAL
MAILING DATE: Jul 21, 2009**

The declaration and renewal application filed in connection with the registration identified below meets the requirements of Sections 8 and 9 of the Trademark Act, 15 U.S.C. §§1058 and 1059. The declaration is accepted and renewal is granted. The registration remains in force.

For further information about this notice, visit our website at: <http://www.uspto.gov>. To review information regarding the referenced registration, go to <http://tarr.uspto.gov>.

REG NUMBER: 1536042
MARK: ALEVE
OWNER: BAYER HEALTHCARE LLC

Side - 2

UNITED STATES PATENT AND TRADEMARK OFFICE
COMMISSIONER FOR TRADEMARKS
P.O. BOX 1451
ALEXANDRIA, VA 22313-1451

FIRST-CLASS
MAIL
U.S POSTAGE
PAID

Jeffrey M. GitcheI
Bayer Corporation
100 Bayer Road
Pittsburgh, PA 15205

Int. Cl.: 5

Prior U.S. Cl.: 18

United States Patent and Trademark Office

Reg. No. 1,536,042

Registered Apr. 25, 1989

**TRADEMARK
PRINCIPAL REGISTER**

ALEVE

SYNTEX PUERTO RICO, INC. (PANAMA CORPORATION)

RURAL BOX NO. 6736

80 MARIANA ROAD, 909 KM.1.1

HUMACO, PUERTO RICO 00661

FIRST USE 4-25-1988; IN COMMERCE 4-25-1988.

SER. NO. 726,530, FILED 5-5-1988.

FOR: ANTI-INFLAMMATORY, ANALGESIC, AND ANTIPYRETIC PHARMACEUTICAL PREPARATIONS, IN CLASS 5 (U.S. CL. 18).

RONALD R. SUSSMAN, EXAMINING ATTORNEY

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52

United States Patent and Trademark Office

Reg. No. 3,287,780

Registered Sep. 4, 2007

TRADEMARK
PRINCIPAL REGISTER

ALEVE

BAYER HEALTHCARE LLC (DELAWARE LTD
LIAB CO)
100 BAYER ROAD
PITTSBURGH, PA 15205

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

FOR: PHARMACEUTICAL ANTITUSSIVE-COLD
PREPARATIONS; PREPARATIONS FOR TREAT-
ING COLDS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51
AND 52).

OWNER OF U.S. REG. NO. 1,536,042.

SER. NO. 77-105,868, FILED 2-13-2007.

FIRST USE 7-31-2000; IN COMMERCE 7-31-2000.

NICHOLAS ALTREE, EXAMINING ATTORNEY